

1 **PROOF OF CLAIM OF INTEREST IN REAL PROPERTY**

2 *FILED 2/25/08 AM 10:01*
3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**

5 In re:

6 No.: C 07-4432 *Miss. C. Court of California*

7
8 **REAL PROPERTY AND**
9 **IMPROVEMENTS LOCATED**
10 **AT 636 SAN PABLO AVENUE,**
11 **ALBANY, CALIFORNIA,**

12 Defendant.

13
14 1. Name of Claimant: **BAYVIEW LOAN SERVICING, LLC**
15 **(Loan No. 200056906)**
16 4425 Ponce De Leon Blvd., 5th Floor
17 Mailing Address: Coral Gables, FL 33134
18
19 2. Winslow Norton and Abraham Norton were and are indebted to Claimant for
20 repayment of a first deed of trust loan made on or about June 6, 2007. Claimant
21 holds a first deed of trust in property located at 636 San Pablo Avenue, Albany,
22 California.
23
24 3. The consideration for this debt (or ground of liability) is follows:
25
26 **ADJUSTABLE RATE NOTE secured by DEED OF TRUST**
27 **(See attached Exhibits "A" and "B")**

28 4. This claim is not subject to any setoff or counterclaim.
29 5. No judgment has been rendered upon the claim.
30 6. This claim is filed as a **SECURED CLAIM**.
31 7. No unmatured interest is included in this claim.
32 8. The undersigned is authorized to file this action.

33 I declare under penalty of perjury under the laws of the United States that the
34 foregoing is true and correct. Executed this 22nd day of February, 2008, at Los Angeles,
35 California.

36 Claimant

37 By *Edward G. Schloss*
38 **EDWARD G. SCHLOSS**
39 Attorney and Agent for Claimant
40 Bayview Loan Servicing, LLC
41 3637 Motor Avenue, Suite 220
42 Los Angeles, CA 90034
43 Telephone (310) 733-4488
44 Facsimile (310) 836-4888
45 C515/cm

ADJUSTABLE RATE PROMISSORY
(CALIFORNIA)

Cornerstone Title Co.
Verifies this to be a true &
correct copy of the original.

\$880,000.00

DATE: June 6, 2007

MATURES: July 1, 2037

FOR VALUE RECEIVED, Winslow Norton and Abraham Norton as maker, whose address is 220 Caldecott Lane #319, Oakland, CA 94602 (the "Borrower"), hereby unconditionally, jointly and severally (if more than one), promises to pay to the order of InterBay Funding, LLC, a Delaware Limited Liability Company as payee, having an address at 89 Forbes Blvd., Suite 1000, Mansfield, MA 02048 (the "Lender"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of Eight Hundred Eighty Thousand and No/100 Dollars (\$880,000.00), in lawful money of the United States of America with interest thereon to be computed from the date of this Promissory Note ("Note") at the Applicable Interest Rate (defined below) in accordance with the terms of this Note.

1. **ADJUSTABLE INTEREST.** Interest on the unpaid principal balance due hereunder shall accrue at an initial interest rate equal to Ten And Seven Eighths Percent (10.875%) per annum (the "Applicable Interest Rate"). Thereafter the Applicable Interest Rate will be adjusted as follows: on a date which is sixty (60) months from the first day of the first calendar month preceding the initial Payment Date (defined below), and thereafter on a date six (6) months from the previous change date (each, a "Change Date"), the Applicable Interest Rate will adjust to reflect the then current "Prime Rate" plus Five And One Eighth Percent (5.125%). The Applicable Interest Rate will not be increased or decreased on the initial Change Date by more than two percent (2%), thereafter the Applicable Interest Rate will not be increased or decreased on any single Change Date by more than one percent (1%). During the term of this Note, the Applicable Interest Rate shall not be lower than the Applicable Interest Rate on the date hereof and shall, provided no Event of Default (defined below) has occurred (in such an event the "Default Rate", as hereinafter defined, will apply), not exceed the Applicable Interest Rate on the date hereof plus six percent (6%). For purposes hereof, the "Prime Rate" shall mean, at any time, the rate of interest quoted in the Wall Street Journal, Money Rates Section as the "Prime Rate" (currently defined as the base rate on corporate loans posted by at least 75% of the nation's thirty largest banks). In the event that the Wall Street Journal quotes more than one rate, or a range of rates as the Prime Rate, then the Prime Rate shall mean the average of the quoted rates. In the event that the Wall Street Journal ceases to publish the Prime Rate, then the Prime Rate shall be the average Prime Rate of the three largest U.S. money center commercial banks, as determined by Lender. Notwithstanding anything to the contrary herein, the Applicable Interest Rate on each Change Date shall be calculated by the Lender based upon the Prime Rate that was in effect on the date which is 45 days prior to said Change Date (or the next subsequent business day if the 45th prior day falls on a holiday or weekend. Interest shall be computed on the actual number of days elapsed and an assumed year of 360 days.
2. **PAYMENT TERMS.** Borrower agrees to pay sums due under this Note in payments of principal and interest. The initial monthly payment shall be in the amount of Eight Thousand Four Hundred Five Dollars And Forty-Six Cents (\$8,405.46). However, monthly payment amounts may change if there is a change in the Applicable Interest Rate. At the time of a change of the Applicable Interest Rate the new monthly payment shall be calculated based upon the principal balance of

EXHIBIT "A"

2140929

UPON RECORDING RETURN TO:

Bayview Loan Servicing, LLC
c/o Nationwide Title Clearing, Inc.
Attn: Final Docs Unit
2100 Alt 19 North
Palm Harbor, FL 33683
(800) 346-9152

Cornerstone Title Co.
certifies this to be a true &
correct copy of the original.
[Handwritten signature]

DEED OF TRUST AND SECURITY AGREEMENT

{ CALIFORNIA }

**Winslow Norton, an unmarried man and
Abraham Norton, an unmarried man,**

as Trustor

(Borrower)

To

First American Title Insurance Company,

as Trustee

(Trustee)

For the benefit of

**InterBay Funding, LLC, a Delaware Limited
Liability Company,**

as Beneficiary

(Lender)

EXHIBIT "B"

2140929

THIS DEED OF TRUST AND SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Security Instrument") is made as of ~~January 6, 2008~~ ^{Copy of the original} by Winslow Norton, an unmarried man and Abraham Norton, an unmarried man, having an address at ~~636 San Pablo Avenue, Albany, CA 94602~~ ^{Copy of the original}, for the benefit of InterBay Funding, LLC, a Delaware Limited Liability Company, having an address at ~~89 Mansfield Boulevard, Suite 1000, Mansfield, MA 02048~~ ^{Copy of the original}, as beneficiary ("Lender").

RECITALS:

Borrower by its promissory note of even date herewith given to Lender is indebted to Lender in the principal sum of Eight Hundred Eighty Thousand and No/100 Dollars (\$880,000.00) in lawful money of the United States of America (the note together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to as the "Note"), with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note and with a maturity date of July 1, 2037.

Borrower desires to secure the payment of the Debt (hereinafter defined in Article 2) and the performance of all of its obligations under the Note and the Other Obligations (defined in Article 2).

ARTICLE 1. - GRANTS OF SECURITY

Section 1.1. PROPERTY IN TRUST. To secure the full and timely payment and performance of the Debt and the full and timely performance and discharge of the Other Obligations, Borrower has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, MORTGAGE, SELL, CONVEY and CONFIRM in trust with power of sale, to the fullest extent permitted by applicable law, unto Trustee the following described "Property", subject, however, to the Permitted Exceptions (defined in Section 5.1), TO HAVE AND TO HOLD the Property unto Trustee, his successors in trust and the Trustee's assigns forever, and Borrower does hereby bind itself, its successors and assigns, to warrant and forever defend title to the Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Borrower shall pay (or cause to be paid) the Debt as and when the same shall become due and payable and shall perform and discharge (or cause to be performed and discharged) all of the Other Obligations of Borrower under the Note and this Security Instrument and the Other Security Documents on or before the date same are to be performed and discharged, then the liens, security interests, estates and rights granted by this Security Instrument and the Other Security Documents shall terminate and be released by the Trustee, otherwise same shall remain in full force and effect. In the event of such termination and release, Trustee, shall, at the request of Lender and at the expense of Borrower, execute an instrument in writing and in recordable form reconveying the trust property to Borrower and shall otherwise release the liens, security interests, estates and rights granted by this Security Instrument and the Other Security Documents.

As used herein, the term "Property" shall mean the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "Property"):

- (a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "Land"); 636 San Pablo Avenue, Albany, CA 94706
- (b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental deed of trust or otherwise be expressly made subject to the lien of this Security Instrument;
- (c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "Improvements");
- (d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, ditches and ditch rights, wells and well rights, well permits, springs and spring rights and reservoirs and reservoir rights appurtenant to or historically used in connection with the premises and all of Trustee's rights and interests under applicable state or Federal law to all water, and to use or consent to use all water, contained in or available from any part of the water bearing formations underlying the Premises, together with all associated easements and rights of way; any and all rights to obtain water, sewer and other services from service districts, water, water courses, water rights, licenses and powers, air rights, mineral rights (including but not limited to hard rock minerals, oil and gas)

1 **PROOF OF SERVICE**

2 I, REYNALDO DEL PILAR, certify that:

3 I am a resident of Los Angeles County, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 3637 Motor Avenue, Suite
5 220, Los Angeles, California 90034.

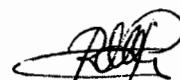
6 On February 22, 2008, I served the within PROOF OF CLAIM OF INTEREST IN
7 REAL PROPERTY on interested parties in this proceeding by placing a true and correct
8 copy thereof enclosed in a sealed envelope with postage pre-paid in the United States
9 Mail at Los Angeles, California addressed as follows:

10 PATRICIA J. KENNEY
11 ASSISTANT UNITED STATES ATTORNEY
12 450 GOLDEN GATE AVENUE, 9TH FLOOR
SAN FRANCISCO, CA 94102

13 I declare that I am employed in the office of a member of the bar at whose
14 direction the service was made.

15 I certify under penalty of perjury that the foregoing is true and correct.

16 Executed on February 22, 2008 at Los Angeles, California.

17 
18 REYNALDO DEL PILAR
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